

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6594 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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BALVANT VECHATBHAI BARIA

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 6594 of 2002  
MR HR PRAJAPATI for Petitioner No. 1  
MS NANDINI JOSHI AGP for Respondent No. 1-3  
MS PJ DAVAWALA for Respondent No. 4
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/08/2002

ORAL JUDGEMENT

By way of this Special Civil Application under  
Article 226 of the Constitution of India, the petitioner

has challenged the order of detention dated 21/6/2002 passed by the District Magistrate, Dahod, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, against the impugned order of detention, the petitioner made a detailed representation to the detaining authority on 8/7/2002 which has been received by the authority on 10/7/2002 and the same has been rejected by the detaining authority on 10/7/2002 after confirmation of the detention order by the State Government, though the District Magistrate has no authority to pass such order after confirmation of the detention order. The District Magistrate though has become functus officio after confirmation of the detention order, the District Magistrate has passed order rejecting the representation of the petitioner. Hence on this ground alone, the impugned order is required to be quashed and set aside. On the other hand, the District Magistrate has not filed any affidavit controverting the say of the petitioner. Further, this point is squarely covered by the decision of this Court rendered in the case of SALIM POTHYU REHMANBHAI BELIA VS. DISTRICT MAGISTRATE, DISTRICT MEHSANA AND ORS. reported in 1994 (2) GLR (UJ) 11, wherein this Court, relying upon the decision of Hon'ble Supreme Court rendered in the Case of Navalshankar Ishwarlal Dave V. State of Gujarat, reported in AIR 1994 SC 1496, has held as under ;-

"that the detaining authority is left with no power to consider and reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

3. Here in the present case, since the District Magistrate has not forwarded the representation of the petitioner to the State Government for its consideration, and has rejected the said representation though the

detaining authority has no power to do so, the order of detention is null and void and is required to be quashed and set aside.

4. The petition is allowed. The impugned order of detention dated 21/6/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Balvant Vechatbhai Baria is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P. DHOLAKIA, J.)

Rafik